

GERALD J. BENICHAK,  
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Plaintiff,  
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v. CIVIL NO. 3:01cv884 (AHN)  
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SIKORSKY AIRCRAFT CORP.,  
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a subsidiary of  
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United Technologies Corp.,  
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Defendant.  
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Plaintiff Gerald J. Benichak ("Benichak") has brought suit against his former employer, Defendant Sikorsky Aircraft Corporation, a subsidiary of United Technologies Corp. ("Sikorsky"), for (1) terminating him in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 et seq.; (2) illegally retaliating against him for filing a grievance for age discrimination with the Connecticut Commission on Human Rights and Opportunities; and (3) violating his rights under the Connecticut Fair Employment Practices Act, Conn. Gen. Stat. §§ 46a-60(a)(1), 46(a)-60(a)(4) and 46a-100 ("CFEPA"), the Connecticut statute proscribing age discrimination and retaliation in the workplace. Upon completion of discovery, Sikorsky filed a Motion for Summary Judgment on all counts pursuant to Fed. R.

Civ. P. 56 and Loc. R. Civ. P. 9(c) (D. Conn.). For the following reasons, the motion [Doc. # 22] is GRANTED in part and DENIED in part.

#### STANDARD

A motion for summary judgment may not be granted unless the court determines that there is no genuine issue of material fact to be tried and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. Rule 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986), cert. denied, 480 U.S. 937 (1987). The burden of showing that no genuine factual dispute exists rests on the party seeking summary judgment. See Adickes v. S. H. Kress & Co., 398 U.S. 144, 157 (1970); Cronin v. Aetna Life Ins. Co., 46 F.3d 196, 202 (2d Cir. 1995). After discovery, if the party against whom summary judgment is sought "has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof," then summary judgment is appropriate. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

The substantive law governing a particular case identifies those facts that are material with respect to a motion for summary judgment. See Anderson, 477 U.S. at 258.

A court may grant summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact . . . .” Miner v. Glen Falls, 999 F.2d 655, 661 (2d Cir. 1993) (citation omitted); see also United States v. Diebold, Inc., 369 U.S. 654, 655 (1962). “A dispute regarding a material fact is genuine ‘if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.’” Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d 520, 523 (2d Cir. 1992) (quoting Anderson, 477 U.S. at 248), cert. denied, 506 U.S. 965 (1992).

In considering a Rule 56 motion, “the court’s responsibility is not to resolve disputed issues of fact but to assess whether there are any factual issues to be tried, while resolving ambiguities and drawing reasonable inferences against the moving party.” Knight v. U.S. Fire Ins. Co., 804 F.2d 9, 11 (2d Cir. 1986) (citing Anderson, 477 U.S. at 248; Eastway Constr. Corp. v. City of New York, 762 F.2d 243, 249 (2d Cir. 1985)); see also Ramseur v. Chase Manhattan Bank, 865 F.2d 460, 465 (2d Cir. 1989); Donahue v. Windsor Locks Board of Fire Comm’rs, 834 F.2d 54, 57 (2d Cir. 1987). Thus, “[o]nly when reasonable minds could not differ as to the import of the evidence is summary judgment proper.” Bryant v.

Maffucci, 923 F.2d 979, 982 (2d Cir. 1991), cert. denied, 502 U.S. 849 (1991); see also Suburban Propane v. Proctor Gas, Inc., 953 F.2d 780, 788 (2d Cir. 1992).

## FACTS

### I. Age Discrimination Claim

The majority of facts in this case are not in dispute. Benichak was an employee of Sikorsky for approximately 32 years before his termination on January 15, 2000. At that time, he was 54 years old. Throughout his career at Sikorsky, Benichak worked as a computer programmer in the Engineering Administration department ("Engineering Administration"), primarily with the mainframe computer system. He received positive work evaluations during his tenure. At the time of his termination, Sikorsky issued him a "Leaving Notice" in which Benichak received marks of "excellent" for ability, conduct, and attendance.

In his informal division in Engineering Administration, Benichak had two colleagues, Gerald Livolsi and Kenneth Vitelli, who also were computer programmers. At the time of Benichak's termination, Livolsi was 49 and had been with Sikorsky for 22 years; Vitelli was 30 and a nine-year Sikorsky veteran.

In the fourth quarter of 1999, Sikorsky sought to eliminate twenty-five (25) positions from Engineering Administration as part of a larger company-wide reduction in force. Sikorsky charged a 40-year-old manager named Jeffrey Jannitto with the task of recommending which employees were to be "downsized" from Engineering Administration. During this process, Jannitto had several meetings with Donald Gover, Sikorsky's Vice President for Engineering Administration, and Barbara Aloe, a Human Resource manager assigned to Engineering Administration, about which employees should be terminated. Jannitto and Aloe testified at their depositions that they made handwritten notes relating to these meetings. Jannitto also possessed a reference document from Sikorsky's Human Resources department that indicated the race, sex, and age of the employees under consideration.

Benichak and Sikorsky disagree sharply about why Jannitto recommended the termination of Benichak as opposed to the younger Vitelli. Sikorsky has submitted materials indicating that Benichak's work position was eliminated as part of the reduction in force. According to Sikorsky, after Jannitto conducted a thorough examination of the various job activities performed by Engineering Administration, he determined that the mainframe computing function was no longer necessary

because it had become automated. Since Benichak devoted 75% of his overall work hours to working with the mainframe computer, Jannitto determined that he was the logical person to be terminated.<sup>1</sup> Sikorsky also maintains that Livolsi and Vitelli performed computing tasks unrelated to the mainframe computer and had a broader range of computing skills than Benichak. Consequently, Jannitto decided that Benichak's position would be eliminated and that Livolsi and Vitelli would be retained.

In contrast, Benichak argues that two sets of key facts demonstrate how his age factored into Jannitto's decision-making process and that Sikorsky's explanation for his termination is pretextual. First, Sikorsky was unable to produce any documents or notes showing how Jannitto compared, scored, or ranked Benichak, Livolsi, and Vitelli when determining which person(s) should be terminated. Although Jannitto and Aloe admitted at their depositions that they generated handwritten notes relating to their meetings with Gover about the reduction in force, Sikorsky was unable to produce any such handwritten notes during discovery.

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<sup>1</sup> In fact, Sikorsky states that Benichak's mainframe computer work, which constituted 75% of his work responsibilities, took him roughly one hour per day.

Second, in recommending which of these three employees to terminate, Jannitto consulted Vitelli about Benichak's computing skills, but never consulted Benichak about Vitelli's computing skills. The record evidence also indicates that Vitelli and Jannitto enjoyed a social relationship outside the office and played recreational basketball together.

After his termination on January 15, 2000, Benichak was offered a severance package for which he had to sign and return a waiver releasing all claims against Sikorsky by March 11, 2000. Benichak did not accept the severance package and subsequently filed an administrative complaint for age discrimination with the state Commission on Human Rights and Opportunities ("CHRO") on April 15, 2000, which Sikorsky received on April 19, 2000.

## II. Retaliation Claim

With respect to his retaliation claim, Benichak states that he asked John Andrews, a co-worker at Sikorsky, to help him identify other employment at Sikorsky. During that process, Andrews testified that he contacted Diane Mallory, the Human Resource Director at Sikorsky, who allegedly told Andrews, "I'd like to advise you the best thing you can do is

not to get involved.”<sup>2</sup> Benichak provides no other significant facts to substantiate his claim of retaliation. In contrast, Sikorsky submitted affidavits indicating that the four Sikorsky supervisors who had hiring authority for the positions to which Benichak applied never spoke to Mallory about Benichak and were unaware that he had filed an age discrimination complaint with the CHRO. Benichak ultimately applied for five positions with Sikorsky and its parent company, United Technologies Corporation, but was not hired for any of them.

## DISCUSSION

### I. Benichak’s Age Discrimination Claim

#### A. Applicable Law

To sustain a claim of discrimination based on age pursuant to ADEA, a plaintiff must satisfy the three-part burden-shifting test set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973), and its progeny. See Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 142 (2000); St. Mary’s Honor Ctr. v. Hicks, 509 U.S. 502, 507 (1993); Texas Dep’t Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981). Initially, a plaintiff asserting an

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<sup>2</sup> Benichak revealed at oral argument that Andrews is now deceased.

employment discrimination claim has the burden of "presenting evidence sufficient to establish a prima facie case of discrimination." Cronin v. Aetna Life Ins. Co., 46 F.3d 196, 203 (2d Cir. 1995) (citing Hicks, 509 U.S. at 502; Burdine, 450 U.S. at 253; McDonnell Douglas, 411 U.S. at 802). To establish a prima facie case for discharge resulting from age discrimination, the plaintiff must demonstrate: "(1) that he was within the protected age group, (2) that he was qualified for the position, (3) that he was discharged, and (4) that the discharge occurred under circumstances giving rise to an inference of age discrimination." Spence v. Maryland Cas. Co., 995 F.2d 1147, 1155 (2d Cir. 1993).

The Second Circuit has "characterized the evidence necessary to satisfy this initial burden as minimal and de minimis." Zimmermann v. Associates First Capital Corp., 251 F.3d 376, 381 (2d Cir. 2001) (internal quotation marks omitted). Moreover, the "mere fact that a plaintiff was replaced by someone outside the protected class will suffice for the required inference of discrimination at the prima facie stage of the Title VII analysis." Id.

If the plaintiff succeeds in establishing a prima facie case, the burden of production shifts to the defendant to articulate an explanation to rebut the prima facie case --

that is, the burden of producing evidence that the adverse employment actions were taken for a legitimate nondiscriminatory reason. Burdine, 450 U.S. at 253; McDonnell Douglas, 411 U.S. at 802. To meet this burden, "the defendant must clearly set forth, through the introduction of admissible evidence," reasons for its actions which, if believed by the trier of fact, would support a finding that unlawful discrimination was not the cause of the employment decision. Burdine, 450 U.S. at 254-55 & n.8. Any legitimate, nondiscriminatory reason will rebut the presumption triggered by the prima facie case; the defendant need not persuade the court that it was actually motivated by the proffered reason. Id.

Once the employer has proffered a nondiscriminatory reason, "[t]he presumption, having fulfilled its role of forcing the defendant to come forward with some response, simply 'drops out of the picture.'" Hicks, 509 U.S. at 510-11 (quoting Burdine, 450 U.S. at 253) (emphasis in original). At this point the "McDonnell Douglas framework -- with its presumptions and burdens -- is no longer relevant." Hicks, 509 U.S. at 510. The question is simply the following: Has the plaintiff shown, by a preponderance of the evidence, that the defendant is liable for the alleged conduct? Id. The

plaintiff must point to sufficient evidence to support a finding that the legitimate nondiscriminatory reason proffered by the employer "was false, and that discrimination was the real reason." Hicks, 509 U.S. at 515 (emphasis in original).

Furthermore, the Supreme Court's recent opinion in Reeves counsels that when deciding whether a judgment as a matter of law is warranted in an ADEA case, a court must take a case-specific approach and evaluate a number of factors, including "the strength of the plaintiff's prima facie case, the probative value of the proof that the employer's explanation is false, and any other evidence that supports the employer's case and that properly may be considered on a motion for judgment as a matter of law." Reeves, 530 U.S. 148-49. In turn, the Second Circuit has advised that the court's task is "to examine the entire record and, in accordance with Reeves, make the case-specific assessment as to whether a finding of discrimination may reasonably be made." Zimmerman, 251 F.3d at 382 (emphasis added).

#### B. Analysis

Sikorsky contends that Benichak has failed to establish a prima facie case for age discrimination under the ADEA because he has not shown that Benichak's discharge occurred under circumstances giving rise to an inference of age discrimination. Sikorsky further asserts that even assuming

Benichak has made his prima facie case, Benichak's termination was effected for a legitimate nondiscriminatory reason - that is, as part of a nondiscriminatory company-wide reduction in force. Finally, Sikorsky argues Benichak has insufficient evidence to demonstrate that Sikorsky's nondiscriminatory reason for his termination was false and that age discrimination was a factor in its decision-making process.

The court disagrees with Sikorsky and finds that the entire record, when viewed under the Reeves standard, presents genuine issues of material fact relating to Sikorsky's reasons for terminating Benichak and gives rise to reasonable inferences that age discrimination occurred. Despite Sikorsky's arguments to the contrary, Benichak has established his prima facie case of age discrimination and, in the face of Sikorsky's nondiscriminatory explanation for Benichak's termination, presented sufficient evidence from which a reasonable factfinder could find this proffered reason to be pretextual. Drawing all reasonable inferences in Benichak's favor, the court finds a reasonable factfinder could find that Sikorsky's decision to terminate Benichak involved improper age discrimination. Although no single fact in this record compels this conclusion, the court holds that the evidence viewed as a whole presents sufficient disputed issues of material fact to merit a jury's consideration.

At its crux, a factual dispute exists as to why Jannitto recommended the termination of Benichak instead of Vitelli. Although Benichak argues that he and Vitelli were effectively competing against each other to retain employment, Sikorsky maintains that Vitelli was retained solely because he performed different computing functions than Benichak which were still needed by the company.

Two sets of facts allow a reasonable factfinder to conclude that Benichak's age factored into Sikorsky's termination decision and to reject the contention that Benichak was simply the nondiscriminatory victim of a corporate downsizing. First, in deciding whether to recommend the termination of Benichak, Livolsi, or Vitelli, Jannitto made the peculiar decision to consult the junior Vitelli about Benichak's computing skills. In contrast, Jannitto never asked Benichak about Vitelli's computing skills. There is no dispute that Vitelli was 24 years younger than Benichak and had 20 fewer years of service to Sikorsky. The record also indicates that Vitelli and Jannitto had a social relationship outside of the office and played recreational basketball together. Jannitto's decision to consult the younger Vitelli regarding Benichak - without making the reciprocal inquiry of Benichak about Vitelli - could cause a reasonable factfinder

to question Sikorsky's motives in deciding to eliminate Benichak's position.

Second, the rationale behind Jannitto's decision-making process appears more questionable when one considers the virtually non-existent paper trail for Sikorsky's decision to terminate Benichak and eliminate his position. Sikorsky, a subsidiary of United Technologies, is a large, sophisticated business organization with established employment procedures, a human resources department, and, presumably, a document retention policy. Nevertheless, Sikorsky did not produce any documents or notes showing how Jannitto and his colleagues compared, scored, or ranked Benichak in deciding whether to terminate him, Livolsi, Vitelli, or their respective job positions.<sup>3</sup> Furthermore, even though Jannitto and Aloe admitted in their depositions that they generated handwritten notes regarding Benichak's termination and their meetings with Vice President Gover, Sikorsky failed to produce any such notes in discovery.<sup>4</sup> Finally, Sikorsky's effort to paint

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<sup>3</sup> The court is unpersuaded by Sikorsky's contention that its decision to retain an Engineering Administration employee named Charles Gill, who was 58 at the time of Benichak's termination, militates in favor of granting summary judgment on the age discrimination claim. Gill was not in Benichak's division, and Jannitto admitted that he had never compared the two employees when deciding whether to terminate Benichak.

<sup>4</sup> Sikorsky had advance warning that these documents, if they ever existed, could become relevant to litigation and

Benichak as an unproductive employee runs counter to its own performance evaluations of him, which gave grades of "excellent" for ability, conduct, and attendance at the time of his termination.

In sum, the court finds that the unusual circumstances surrounding Sikorsky's decision to terminate Benichak in conjunction with the concomitant missing paper trail precludes this court from granting Sikorsky's Motion for Summary Judgment on the age discrimination claim. A reasonable factfinder could infer from this record that Sikorsky's proffered nondiscriminatory reason was false and that Benichak's age factored into the adverse employment action. Thus, the court denies Sikorsky's Motion for Summary Judgment with respect to Benichak's federal and state age discrimination claims.

## II. Benichak's Retaliation Claim

### A. Applicable Law

Benichak's other claim is that after he filed his administrative complaint of age discrimination with the CHRO,

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should have been retained. Benichak was terminated on January 15, 2000. Sikorsky had notice as of March 11, 2000, that Benichak was reserving his right to sue by refusing to accept the severance package offered to him by that date. He subsequently filed his administrative complaint of age discrimination with the CHRO on April 15, 2000, which Sikorsky received on April 19, 2000.

Sikorsky retaliated against him by not hiring him for other positions at Sikorsky or United Technologies. To prevail on a claim of retaliation, the employee must show that (1) the employee was engaged in protected activity; (2) the employer was aware of that activity; (3) the employee suffered an adverse employment action; and (4) there was a causal connection between the protected activity and the adverse employment action." Reed v. A.W. Lawrence & Co., 95 F.3d 1170, 1178 (2d Cir. 1996). The issue here pertains to the fourth element - that is, whether a causal nexus existed between Benichak's pursuit of the age discrimination claim and Sikorsky's decision not to hire him in another capacity.

B. Analysis

Unlike the age discrimination claim, Benichak's retaliation claim is predicated on one questionable piece of evidence that is insufficient to allow a reasonable factfinder to infer retaliation occurred. After his termination, Benichak asked John Andrews, a co-worker at Sikorsky, to help him identify other job opportunities at Sikorsky or United Technologies. Based on these conversations, Benichak applied for five positions; four were filled by other applicants, and the remaining position was cancelled. In the process of assisting Benichak, Andrews testified that he contacted Diane Mallory, the human resource director at Sikorsky, who

allegedly told Andrews, "I'd like to advise you the best thing you can do is not to get involved." Benichak offers no other substantial evidence that Sikorsky pursued any adverse employment action against him.

The court agrees with Sikorsky that it would be wholly speculative to permit his retaliation claim to proceed based primarily on this alleged statement. Sikorsky has presented multiple affidavits indicating that the hiring supervisors for the positions to which Benichak applied never spoke to Diane Mallory and were unaware of his administrative complaint for age discrimination. Since Benichak has presented no other significant evidence of retaliation, the court cannot conclude from this record that a causal connection existed between Benichak's CHRO complaint and any adverse employment action taken by Sikorsky. Thus, the court grants Sikorsky's Motion for Summary Judgment with respect to Benichak's federal and state retaliation claims.

#### CONCLUSION

For the reasons set forth above, Sikorsky's Motion for Summary Judgment with respect to Benichak's federal and state age discrimination claims is DENIED. However, its Motion for Summary Judgment is GRANTED with respect to his federal and state retaliation claims [Doc. # 22].

SO ORDERED this \_\_\_\_ day of April, 2003, at Bridgeport,  
Connecticut.

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Alan H. Nevas  
United States District Judge